IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STX PAN OCEAN CO., LTD.	§	
Plaintiff,	§	
	§	
vs.	§	C. A. NO. 4:11-cv-208
	§	
THYSSENKRUPP MATERIALS NA, INC.,	§	
GOTHAER ALLGEMEINE	§	
VERSICHERUNG AG	§	
Defendants.	§	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff STX Pan Ocean Co., Ltd. through undersigned counsel for its complaint seeking declaratory relief against Defendants ThyssenKrupp Materials NA, Inc. and Gothaer Allgemeine Versicherung AG, *in personas*, and avers upon information and belief:

I.

SUBJECT MATTER JURISDICTION

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and the subject matter jurisdiction of this Court is found in U.S. Constitution Article 3, Section 2, and 28 U.S.C. § 1333.

II.

THE PARTIES

2. At all material times, Plaintiff STX Pan Ocean Co., Ltd. was and still is a corporation organized under and pursuant to laws of the Republic of Korea with its principal office in Seoul, Korea and was the time chartered owner of M/V AGIA.

3. At all material times, Defendant ThyssenKrupp Materials NA, Inc. (hereinafter "ThyssenKrupp") was and is a corporation organized and existing under and by virtue of the

laws of one of the states of the United States with an office in place of business at 22355 West Eleven Mile Road in Southfield, Michigan trading from time to time as ThyssenKrupp Steel Services Trading and was the consignee, importer of record and owner of four consignments of 288 steel coils more fully described in four bills of lading numbered POBUDLCHOU080855 through and including POBUDLCHOU080858 dated September 6, 2008 and issued for and on behalf of the Master of the M/V AGIA (hereinafter BS/L 55,56,57 or 58) which were carried by the M/V AGIA from the port of Dalian, Peoples Republic of China, to the port of Houston, Texas during the period September 6, 2008 through and including November 3, 2008.

4. At all material times, Defendant Gothaer Allgemeine Versicherung AG (hereinafter "Gothaer") was and is a corporation or other legal entity organized and existing under and by virtue of the laws of the Republic of Germany with an office in place of business at Katharinenstrasse 23-25 Hamburg, Germany and a marine cargo underwriter which, having issued a certain policy of marine cargo insurance #W55700 207 WA to co-Defendant ThyssenKrupp covering the consignments of steel coils imported and owned by ThyssenKrupp whose claim was paid less deductible prescribed in the policy on or about July 14, 2009, is subrogated to all or some of the rights of co-Defendant ThyssenKrupp.

III.

UNDERLYING TRANSACTIONS

5. On or before September 6, 2008 Defendant ThyssenKrupp entered into a contract of carriage for coiled steel sheet with East Sailing International Shipping Co., Ltd., which had sub-chartered the vessel from Plaintiff.

6. Upon information and belief, co-Defendant ThyssenKrupp bought the coils of steel sheet from Angang Group International Trade Corporation on CFR Free out Houston basis

and Angang arranged and paid for the 288 package steel coils to be loaded, stowed and dunnaged at the port of Dalian aboard M/V AGIA by stevedores engaged by Angang.

7. Bill of lading 55 was issued for the Master for 43 packaged coils of galvanized steel sheet; B/L 56 was issued for 27 packaged coils of galvanized steel sheet; B/L 57 was issued for the master for 90 packaged coils of cold rolled steel sheet and B/L 58 was issued for the master for 128 packaged coils of cold rolled steel sheet.

8. The vessel first arrived at Houston after an unremarkable Trans-Pacific voyage and the 288 packages of steel sheet at the North Side City Dock # 16 were discharged by Shippers Stevedoring Co. of Houston, Texas who was engaged by co-Defendant ThyssenKrupp during the period November 1 - 3, 2008.

9. The discharge was attended by Houston based marine cargo surveyors Michael Morgan of O'Keefe and Associates (1) appointed by Plaintiff and (2) Severino Calima of Capt. Derrick, Channelview, Texas appointed by ThyssenKrupp and Gothaer.

10. The condition of the coils at the moment of discharge is of crucial significance, both factually and legally, in allocating the respective rights, obligations, liabilities and responsibilities of the parties because it was at that moment that Plaintiff's alleged custody of the coils ended.

11. Surveyor Calima reported to his principals that an unspecified number of coils stowed in the aft of hold no. 1 and the forward end of hold no. 5 were "crushed," "out of round," and "deformed" to various degrees due to pressure from other cargo and that "scattered" coils were observed in all four holds with various degrees of damage to outer wrappers caused by "rough, careless and/or improper handling in the load port."

IV.

CHINESE PROCEEDINGS

12. In or about October 29, 2009 attorneys representing Gothaer Allgemeine Versicherung AG filed a lawsuit in Dalian, China against STX Pan Ocean Co., Ltd., China Marine Shipping Agency Liaoning Co., Ltd., KBD Capital Corp. and Changsung Shipping Co. Ltd. claiming that all four Defendants are jointly liable for damage to an unspecified number of coils observed upon discharge carried under bills of lading POBUDLCHOU080855 through POBUDLCHOU080858 dated September 6, 2008. The complaint alleges that STX Pan Ocean was the "contractual carrier under the bills of lading." Defendants KBD and Changsung are alleged by Gothaer's Chinese attorneys to be the registered Owners, demise charterers, operators, managers and actual carrier and China Marine Shipping Agency is alleged to be an agent, but nevertheless jointly and severally liable.

13. The Chinese lawsuit complains that when the M/V AGIA arrived at Houston on November 1-3, 2008, surveyors found some coils were seriously deformed and damaged due to improper stowage and insufficient lashing and dunnage with the result that losses in the amount of U.S. $200,434 were incurred and Gothaer paid $193,131.71.

14. The coils were sold and shipped by Angang Group HK Ltd. to ThyssenKrupp Steel Services.

15. In the Court in Dalian, China, Gothaer Allgemeine Versicherung alleges that STX Pan Ocean was a contract carrier under the bills of lading.

16. The four bills of lading under which Defendant Gothaer sues in China are on a form published by Plaintiff STX Pan Ocean but signed for and on behalf of the master of the M/V AGIA by China Marine Shipping Agency Liaoing Co., Ltd. and provide as part of the jurisdictional clause 32 that "any dispute arising under this bill of lading shall be decided in the

country where the carrier has his principal place of business, and the laws of said country shall apply except as provided elsewhere herein.

17. If, as Gothaer Allgemeine Versicherung alleges in the Dalian Court that STX Pan Ocean is a contract carrier, then Gothaer Allgemeine Versicherung was obliged to sue in a court in Seoul, Korea where STX Pan Ocean has its principal place of business.

18. If, KBD Capital is the "carrier" then a court in Seoul is the forum which was contractually fixed because KBS is admittedly a Korean Company Corporation.

19. As a subrogee, Gothaer was and is bound by the terms and conditions of the contract of carriage which its subrogor entered into and under which it sued in China.

20. By suing STX Pan Ocean in China, Gothaer breached the forum selection clause in the bills of lading.

21. Moreover, clause 31 in the bills of lading provided:

> As regard with moving to and from USA this bill of lading shall have effect subject of the provisions of the Carriage of Goods by Sea Act of the United States approved April 16, 1936.

Subject steel coils were carried from China to the United States entitling Plaintiff to the benefits of Section 1304(5) of COGSA enabling it to limit its liability to U.S. $500 per package.

22. In addition, clause 24 of the bills of lading provided expressly that the carrier's liability shall in no event exceed British £100 or U.S. $500 per package, whichever is less unless the shipper declares the actual value of the goods in the space provided on the face of the bills of lading, which the shipper did not do.

V.

VENUE

23. Venue is proper in the United States District Court for the Southern District of Texas pursuant to 28 U.S.C. § 1391 in that a substantial part of the events or omissions giving

rise to the dispute between the Plaintiff and the Defendants occurred in this district aboard the M/V AGIA during discharge of the vessel at the Houston City Dock and thereafter at KinderMorgan Warehouse No. 6, City Docks 11 and 21 and Richway Willbarks Warehouse in Houston.

VI.
DECLARATORY JUDGMENT

24. This is an action for declaratory judgment pursuant 28 U.S.C. § 2201 for the purpose of determining issues in actual controversy between the Plaintiff and the Defendants.

25. There is a real, substantial and justiciable case and controversy between the parties hereto with respect to the duty, if any, that STX Pan Ocean Co., Inc. owed to Defendant(s) and, if there were a duty and that duty arose out of a contract of carriage set forth in the aforesaid bills of lading dated September 6, 2008, whether Defendants can prove by a preponderance of the evidence that the contents of any packaged coils were physically damaged in a legally significant way at the time of their delivery to the Defendants' stevedore for discharge on November 1-3, 2008 and whether, assuming the damage was proved, whether STX Pan Ocean is entitled to limit any liability to $500 per package pursuant to the U.S. Carriage of Good by Sea Act (1936), set forth in the Notes following 46 U.S.C. § 30701, and the provisions of the contract of carriage.

26. By reason of the foregoing Plaintiff seeks and is entitled to a declaration that it is free of liability to either or both of the Defendants in respect of the cargo of bundled pipe or, in the alternative, if Plaintiff be found liable, that its liability is limited to $500 per packaged coil proved by Defendants to have been damaged along with the individual extent of the damage in accordance with the holding of *Servicios - Expoarma, C.A. et al. v. Industrial Maritime Carriers, Inc.*, 135 F. 3d 984 (5CA 1998) during Plaintiff's custodial period.

VII.

INJUNCTIVE RELIEF

27. Plaintiff has been improperly sued by Defendant Gothaer Allgemeine Versicherung AG in Dalian, China. The matter in issue in the Court in Dalian is the same as set forth in this complaint. There are additional parties named in the Chinese lawsuit but it would appear that focal issues are: (a) the identity of the party who caused the alleged damage; (b) whether and the extent to which any coils were damaged at the moment of custodial transfer by Plaintiff to Defendants; and (c) whether Plaintiff is entitled to limit its liability as a matter of fact and law. The Defendants' choice of a Chinese forum is vexatious in that Plaintiff apprehends and fears that the Dalian Court may not enforce the limitation of liability prescribed by U.S. law and the provisions of the bills of lading which reflect the public policy of the United States of America as codified in the Carriage of Goods by Sea Act.

28. Defendants ought to be enjoined from suing Plaintiff in the Court of Dalian, China in breach of the forum selection clause set forth in said bills of lading and in the interest of justice, in so far as the witnesses and evidence probative of the coil condition at the critical moment of custodial transfer are located in this district.

29. Plaintiff will move for declaratory and injunctive relief at the earliest possible time after Defendants have appeared in this action prohibiting Defendants from further prosecution of the claims in the Court in Dalian, China.

WHEREFORE, Plaintiff STX Pan Ocean Shipping Co. Inc. prays that this Honorable Court enjoin Defendants from prosecuting the cargo claims against Plaintiff in Dalian, China and enter a judgment and decree that Plaintiff is not liable to Defendants for any damage to the coils carried under the four bills of lading described above but that Plaintiff's liability, if any, be limited to $500 per damaged coil of steel sheet and for such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

/s/ Richard A. Branca

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